

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle M. DuBois

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating certain mortgages.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>1/17/2025</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act regulating certain mortgages.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 167E of the General Laws is hereby amended by adding the following
2 section :-

3 Section 17. (a) An entity , its successors or assigns, may originate or act as an
4 intermediary between originators and borrowers on a shared appreciation mortgage loan,
5 pursuant to a program for shared appreciation mortgage loans which has been submitted to and
6 approved by the Commissioner of Banks, to the owner of real estate improved with a dwelling
7 designed to be occupied by not more than 4 families, provided, however, that the owner shall
8 occupy the mortgaged real estate in whole or in part.

9 (b) Definitions:

10 “shared appreciation mortgage” shall mean a mortgage loan, as defined in section 3
11 of chapter 167E, containing an agreement between a mortgagor and a mortgagee that provides
12 for the mortgagee, its successors or assigns, to share in any appreciation in value (or the option to
13 do so), of the residential property upon the occurrence of a certain event, including but not

14 limited to the transfer of ownership, repayment maturity date, sale of the residential property, or
15 any other event contemplated by such loan agreement.

16 “shared appreciation payment” shall mean the amount of any appreciation in value
17 that the mortgagor is required to pay to the mortgage holder.

18 “appreciation in value” shall be measured as the difference, if positive, between the
19 gross sales proceeds of the sale of the residential property or the appraised value of the property
20 at the time payment in full of the loan is due, and the appraised value of the residential property
21 at the time of the original closing of the shared appreciation mortgage loan, minus the actual cost
22 of any improvements made by the mortgagor. The appraised values in this subsection shall be
23 determined by an appraisal by a state-certified general real estate appraiser or a state-certified
24 residential real estate appraiser as defined by section 178 of chapter 112.

25 a shared appreciation mortgage loan is a residential mortgage loan, as defined in 15
26 U.S.C. § 1602(dd)(5).

27 (c) The terms of the shared appreciation mortgage loan:

28 shall state that the shared appreciation payment shall not exceed the lesser of:

29 15 per cent of the appreciation value; or

30 15 percent of the value of the property at the time of the consummation of the
31 shared appreciation mortgage loan, as determined by an appraisal of comparable home values by
32 a state-certified general real estate appraiser or a state-certified residential real estate appraiser as
33 defined by section 178 of chapter 112.

34 shall not include a penalty for satisfying or otherwise terminating the mortgage
35 before its scheduled maturity date;

36 shall not restrict or waive the mortgagor's substantive or procedural rights or
37 remedies at law;

38 shall not be prohibited from refinancing at any given time for the duration of the
39 mortgage;

40 shall require the mortgage holder to agree to subordinate the shared appreciation
41 mortgage upon request and if the borrower qualifies to refinance the first lien mortgage;

42 shall state "Any person who purchases or is otherwise assigned this obligation shall
43 be subject to all claims and defenses that the mortgagor could assert against the original
44 mortgagee;"

45 shall not include confidentiality provisions regarding the terms of the loan;

46 shall not include mandatory arbitration clauses; and

47 shall not become due and owing upon the death of the borrower if the borrower's
48 heir(s) are living in or intend to live in the property at the time of the borrower's death. The
49 surviving heir household member(s) shall be able to continue paying on the loan until the loan
50 becomes due and owing in full.

51 (d) Required pre-consummation housing counseling:

52 a shared appreciation mortgage may not be consummated less than 14 calendar
53 days after the mortgagor obtains counseling from a HUD-certified housing counselor;

54 the housing counselor shall counsel the mortgagor on the terms of the shared
55 appreciation mortgage loan and alternatives;

56 the mortgagee shall pay the cost of the housing counseling.

57 (e) Notice before consummation of the shared appreciation mortgage: At least 21
58 business days prior to consummating a shared appreciation mortgage, and no less than 3 days
59 before the mortgagor is scheduled to attend housing counseling pursuant to subsection (d) of this
60 section, the mortgage holder shall provide to the mortgagor, in writing, in a form that the
61 mortgagor may keep:

62 all documents to be signed or otherwise provided upon consummation of the shared
63 appreciation mortgage;

64 a clear and conspicuous disclosure, with the format and content to be determined
65 by the Attorney General, stating:

66 the counseling requirement and telephone number and website established by the
67 Department of Housing and Urban Development for finding a HUD-certified housing counselor
68 setting;

69 the maximum shared appreciation payment the mortgagor will be required to pay at
70 maturity, in a dollar amount, and the manner and date in which it shall be paid; and

71 such other information as the Attorney General may require.

72 (e1) Additional requirements for foreclosure-related services: If a transaction
73 subject to this section is a foreclosure rescue transaction or foreclosure-related service, as defined
74 by 940 CMR 25.01:

75 i. The Annual Percentage Rate, as determined pursuant to section 5 of chapter
76 140D, for a mortgage loan originated in connection with a shared appreciation mortgage loan
77 may not exceed the Average Prime Offer Rate, as defined by 12 CFR 1026.35(a)(2).

78 ii. A transaction subject to this section that includes reconvening to the mortgagor a
79 property in which the mortgagor currently resides and in which the mortgagor had an ownership
80 interest within the preceding three years, the sale price to be paid by the mortgagor shall not
81 exceed the lesser of:

82 a. the current market value of the property as determined by an appraisal of
83 comparable home values by a state-certified general real estate appraiser or a state-certified
84 residential real estate appraiser as defined by section 178 of chapter 112, or

85 b. twenty percent in excess of the price the seller paid for the property.

86 (f) Servicing of the loan

87 The entity that originated a shared appreciation mortgage loan, and its successors
88 or assigns, shall provide periodic statements to the borrower during the life of the loan. The
89 periodic statements requirements shall be the same, and on the same schedule, as those found in
90 the Truth in Lending Act (TILA) requirements for mortgage loans, 12 CFR § 1026.41 even if the
91 entity is not otherwise subject to the federal TILA

92 The entity that originated a shared appreciation mortgage loan, and its successors
93 or assigns shall provide notification of transfer of servicing and transfer of ownership of the loan
94 to the borrower. Such requirements shall be the same and on the same timing as those found

95 under TILA and the Real Estate Settlement Procuers Act (RESPA) 12 U.S.C. 2601 et seq. even if
96 the entity is not otherwise subject to the federal TILA or RESPA.

97 The entity that originated the shared appreciation mortgage loan, and its successors
98 or assigns, and the servicer of the shared appreciation mortgage loan shall act in good faith
99 toward a borrower in the servicing of a shared appreciation mortgage and in any foreclosure
100 action relating to such an obligation.

101 (g) Notice before the shared appreciation payment becomes due to the lender

102 Within 5 days of the borrower's request at any time, and 90 days before the defined
103 maturity date of a shared appreciation mortgage, the entity that originated a shared appreciation
104 mortgage loan, and its successors or assigns, shall provide notification to the borrower that
105 includes:

106 An itemization of the amount of appreciation value that will be due upon the
107 triggering of the right of the entity to receive a shared appreciation payment;

108 The date the shared appreciation payment is due; and

109 The manner in which the shared appreciation payment must be paid

110 90 days before the defined maturity date of a shared appreciation mortgage, the
111 entity that originated a shared appreciation mortgage loan, and its successors or assigns, shall
112 send the borrower via first class and certified mail to the property address a questionnaire asking
113 whether the borrower wishes to remain in the home after maturity and providing a list of all
114 home retention options available to the borrower from the entity, if any. If the borrower responds
115 they want to remain in the home, the mortgage holder shall refer the borrower to a HUD-certified

116 housing counselor, at the mortgage holder's expense, for assistance in determining what options
117 are available to remain in the home before any of the shared appreciation amounts can be
118 disbursed.

119 (h) Remedies:

120 If any of the provisions of this Section are violated, the contract shall be void and
121 the mortgagor shall be entitled to actual damages and reasonable attorneys fees.

122 Any shared appreciation agreement which violates any of the provisions of this
123 section is declared void, is a per se violation of the Massachusetts chapter 93A, and is grounds
124 for license revocation.

125 Section 369 of chapter 128 of the Acts of 2024 is hereby repealed

126 The Attorney General shall promulgate regulations necessary to carry out this
127 section and shall be entitled to enforce these regulations, including by recommending to the
128 Division of Banks that any licensure granted to the entity be revoked and by conducting
129 investigations into compliance with these regulations.